

**California Trout
Coast Action Group
Environmental Law Foundation
Environmental Protection Information Center
Richard Gienger
Institute for Fisheries Resources
Northcoast Environmental Center
Northern California Association of River Guides
Pacific Coast Federation of Fishermen's Associations
Salmonid Restoration Federation
Sierra Club California
Smith River Alliance
Trout Unlimited of California**

November 16, 1998

Mr. Bruce Halstead, US Fish & Wildlife Service
1125 16th Street, Room 209
Arcata, CA 95521
Fax (707) 822-8411
Re: Permit numbers PRT-828950 and 1157.

Mr. John Munn, California Department of Forestry
1416 Ninth Street
Sacramento, CA 95814
Fax (916) 653-8957
Re: SYP 96-002

Dear Mr. Halstead and Mr. Munn,

The following comments are submitted on behalf of a diverse coalition of fisheries, restoration and conservation advocates and organizations. Many of the undersigned individuals and organizations will be submitting additional comments under separate cover regarding these and other documents associated with the Headwaters Forest agreement.

Recovery of California's coastal salmonid fisheries is our primary goal as a coalition. Thus we are greatly concerned that the proposed Habitat Conservation Plan/Sustained Yield Plan (HCP/SYP) prepared by Pacific Lumber Company not only lacks a clear strategy for contribution to salmonid recovery, but also may place the very survival of California's coho salmon in jeopardy.

Pursuant to a court order issued after years of illegal and unscientific delays, the National Marine Fisheries Service (NMFS) listed northern California coho as "threatened" under

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the federal Endangered Species Act 18 months ago. Since that time, NMFS has failed to adopt a final designation of critical habitat, failed to issue final regulations defining "harm" to the species, failed to complete a 4(d) rule for commercial and sport fishing, failed to implement or even publicly release guidelines for avoiding unlawful "take" of coho during timber operations (despite requests to do so by the California Department of Forestry), and failed to begin the process of planning for coho recovery.

Instead, the agency has focused almost exclusively on designing "voluntary" mechanisms for technical compliance with certain provisions of the Endangered Species Act, including vague Memoranda of Understanding with the State of California and HCPs/incidental take permits for private landowners. However, in the complete absence of action on critical habitat, harm, take, and recovery planning, these voluntary agreements cannot be evaluated with even a pretension of scientific or legal credibility.

Without a comprehensive understanding of overall coho populations, current refugia populations, and existing habitat conditions throughout the evolutionarily significant unit (ESU) and other ESUs within the species' range; a clear identification of which crucial environmental and management factors are causing the problems; and an overall strategy identifying remediation steps which should be taken throughout the historic range of the species, it is impossible to determine what level of take, if any, is appropriate under a specific HCP and equally impossible to determine whether such take will be likely to appreciably reduce the likelihood of survival and recovery of coho in the wild.

Further, NMFS must not only base its decision whether to approve the HCP on this information, but also must clearly inform the public of this information so the public can make an independent judgement whether approval of an HCP is or is not appropriate and legal. NMFS has not conveyed this information to the public, and we believe that NMFS does not have sufficient information in hand on which to base a defensible decision. Approval of any HCP or SYP affecting coho salmon must be delayed at least until final critical habitat is designated, harm is defined, the prohibition against take is enforced and a range-wide coho recovery plan is finalized.

Our general concerns are greatly exacerbated by the tremendous specific deficiencies of the Pacific Lumber HCP/SYP with respect to conservation of aquatic habitat. The document is designed above all else to facilitate immediate liquidation of all available ancient and mature forest while hiding behind a sparse and irrational window-dressing of water quality, fisheries and wildlife mitigations.

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Data reflecting already lethal sediment and temperature levels in many watercourses is either ignored or excluded in the SYP Watershed Assessment. Furthermore, the best available science concerning measures necessary to conserve salmonids (as reflected in both Spence et al 1996 and FEMAT 1993) is completely ignored in favor of what NMFS officials characterized as a "high risk approach" (testimony of Vicki Campbell before the California Legislature's Joint Committee on Headwaters Forest and Ecosystem Management, March 16, 1998). It is ethically and scientifically unacceptable to adopt an

approach that risks the extinction of coho and other salmonids, and there is no provision of law or regulation that justifies approval of a permit based on "high risk" rather than the best available scientific information. In fact, such an approach, which could well "appreciably reduce the likelihood of the survival and recovery" of coho and other covered salmonids, clearly violates the provisions of the Endangered Species Act (see 16 U.S.C. 1539 (a)(2)(B)(iv)).

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Destruction of the coastal salmon fishery has created tremendous economic as well as ecological dislocation. By some estimates, nearly 40,000 fishing jobs have vanished from the North Coast in the past few decades as salmon stocks have declined. Pacific Lumber's SYP clearly fails to give adequate "consideration to environmental and economic values" in violation of 14 CCR 1091.1(b). The Draft Environmental Impact Statement/Environmental Impact Report concerning the Headwaters agreement similarly fails to analyze the economic costs of salmon freshwater habitat destruction, or the potential economic benefit of a recovered fishery.

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Finally, this HCP contemplates granting Pacific Lumber "No Surprises" assurances for the fifty-year term of the incidental take permit. Legal and scientific experts have roundly criticized this policy, and a lawsuit against its adoption is now in progress. This policy, because of its completely baseless assumption that biological "surprises" can be avoided, is likely to ensure that failing mitigation measures will remain in place for decades. Given the manipulation, obfuscation, and outright omission of relevant baseline data in Volume II of this document (see discussion of "Watershed Assessment" below), such assurances seem especially inappropriate in this case. Furthermore, the analysis of watershed conditions that will lead to site-specific forestry prescriptions and mitigations will not be complete for at least three years (see discussion of "Watershed Analysis" below). Granting Pacific Lumber "No Surprises" assurances when baseline data, levels of take and mitigation measures are not even developed in the HCP would represent a new low in implementation of this illegal and scientifically bankrupt policy.

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For these reasons, we ask that Pacific Lumber Company's HCP/SYP and applications for incidental take permits be denied by NMFS, the US Fish & Wildlife Service, the California Department of Fish & Game and the California Department of Forestry.

Comments on specific deficiencies of the HCP/SYP follow below.

Watershed Assessment

Stream survey and habitat condition data in the SYP are often missing, incomplete or deliberately misleading. Stream survey, sediment and temperature data for Bear Creek, for example, reflects none of the impacts of a devastating debris torrent that eradicated three to four miles of recovering coho habitat in January of 1997. This is despite the fact that a 1997 Pacific Watershed Associates study commissioned by Pacific Lumber concluded that 85% of the sediment in Bear Creek originated on the 37% of the watershed that has been logged in the past 15 years.

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Even more outrageously, Pacific Lumber has included in the SYP a list of instream habitat structures in Bear Creek, dated April 25, 1997, that describes most of these structures as "functioning." According to the California Department of Fish & Game, all but one of these structures was obliterated by the January 1997 debris torrent. The torrent also aggraded the stream by several feet and eliminated virtually all pools and riparian canopy, none of which is reflected by the other SYP data on Bear Creek. Pacific Lumber submitted their SYP for public review on July 14, 1998, over 18 months following the debris torrent, yet their document does not even acknowledge that this event happens. Such falsification casts into doubt the veracity of all other data in the watershed assessment section of the SYP. No SYP for Pacific Lumber should be approved without a watershed assessment that accurately reflects current on-the-ground conditions. These conditions, not postulated future conditions under speculative management regimes, should be used as the baseline for analysis of cumulative watershed effects and significant adverse impacts under the California Environmental Quality Act. Any and all watershed data submitted by Pacific Lumber should be reviewed thoroughly for accuracy.

Roads

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The HCP proposes a method for "storm-proofing" roads that relies heavily upon the undefined abilities of a "trained observer" employed by Pacific Lumber. This observer will survey PL's road network, identify sites likely to contribute sediment to streams, and schedule "medium" and "high" priority sites for undefined "corrective action." There is no requirement that this observer possess any expertise in geology, geomorphology, hydrology, or even forest road construction and maintenance. Furthermore, this process at best will only address the most serious continuing road-related problems from past projects, at worst will allow a poorly-qualified PL employee to pronounce failing roads "storm-proof," and is highly unlikely to result in a "storm-proof" road network that poses no threat to fisheries or water quality.

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The HCP also allows road construction during the winter period, requiring shutdown of operations only when a "visible increase in turbidity" of watercourses is noted. Obviously, by the time such turbidity is observed, adverse impacts to water quality and fisheries will have already occurred, and cannot be mitigated by a cessation of operations. Furthermore, PL employees and contractors must monitor themselves for compliance with such provisions. PL has already demonstrated a complete and well-documented inability to comply with very similar provisions of the California Forest Practice Rules, and cannot be trusted to conduct winter road operations in a responsible manner. In order to properly conserve aquatic resources, road construction during the winter period should not be allowed under any circumstances.

Buffer Zones

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The streamside buffer zones prescribed as interim and default measures under the HCP are insufficient to protect and recover the coho and other salmonids. The zones are too

narrow overall, allow far too much activity, and are not likely to preserve the stream temperature, microclimate, large woody debris recruitment or sediment filtration necessary to recover this fishery. Incredibly, there is no buffer zone at all that restricts logging along steep, erodible Class III streams (even though these streams can contribute massive amounts of sediment directly into stream and river systems regardless of wider buffers downstream). Furthermore, in many areas riparian zones are already badly damaged, and there is no provision for restoring these areas or instream habitat conditions so that coho and chinook may return to streams from which they have been extirpated.

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Similarly, there is no explicit provision in the HCP for identifying and protecting the few remaining cold-water refugia on Pacific Lumber's land. The Humboldt Bay WAA tributaries especially contain some of the last remaining wild runs of coho in the area, and should receive significant protection. Even in severely degraded stream systems like Yager/Lawrence, the scattered remaining areas where good riparian canopy and instream conditions exist must be preserved in order to provide sources of cool water. Old-growth Douglas-fir and mixed hardwood stands still present in the Mattole and Bear River watersheds provide essential cold water to these systems, where restoration and fisheries recovery efforts are of utmost importance to local residents.

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Far from conserving these refugia, the interim and default riparian prescriptions in the HCP seem designed to allow the most logging in areas where good riparian canopy and LWD recruitment potential still exist (i.e. areas that meet the pre-harvest basal area requirements under Pacific Lumber's Late Seral Selection silvicultural prescriptions).. It is unclear how abandonment of this extremely high biological priority can be rationalized in favor of Pacific Lumber's plans to maximize immediate extraction of large trees, the largest of which tend to grow in the Site 1 areas near streams and rivers. Measures should be immediately implemented to protect the remaining cold-water and riparian refugia on Pacific Lumber land, and to restore all stream systems historically occupied by coho to a condition where these fish could recolonize, survive and reproduce successfully.

Watershed Analysis

Virtually all of the long-term aquatic conservation measures to be implemented under this HCP are not detailed in the document. Instead, they are deferred to a "watershed analysis" process developed by the Washington Department of Natural Resources. This absurd approach would grant incidental take authority and "No Surprises" assurances on the basis of an untested process that will not even begin until after the permit is issued. Credible watershed analysis would contribute greatly to understanding of the baseline condition of PL's land and the aquatic habitat present there, and might be useful in evaluating appropriate conservation measures. This analysis, however, needs to be done before any permit legalizing further habitat destruction can be issued. If state and federal agencies lack site-specific information about the condition of fisheries on PL land, they should insist upon its collection and review prior to making any long-term management decisions. A plan to do future planning cannot be approved under the requirements of the

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Endangered Species Act, National Environmental Policy Act, or California Environmental Quality Act.

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Although the Washington DNR process was developed in order to help identify habitat problems and inform development of site-specific forestry prescriptions, the process is far from foolproof. According to a two-part review of the Washington DNR process conducted by scientists who helped to develop it (Collins and Pess, 1997a and 1997b), prescriptions resulting from watershed analysis tended largely to mimic the state's standard forestry rules. Furthermore, in areas that were identified as problematic or high-risk, the prescriptions still relied heavily on the professional judgement of land managers rather than conservative scientific assumptions. Specifically regarding the risks associated with mass wasting, this review determined that the watershed analysis process often did not produce sufficient site-specific data to develop appropriate remedies, and that land managers often chose to rely upon their own anecdotal judgement rather than scientifically valid information in developing prescriptions. Ultimately, this study determined that nearly two-thirds of the prescriptions developed under watershed analysis lacked sufficient scientific justification, and probably would fail to meet the goal of protecting and restoring aquatic habitat. Finally, there are no modules in the Washington DNR process that address gravel mining; PL nonetheless proposes to use watershed analysis to evaluate and carry out its own extensive gravel mining operations. Given these numerous weaknesses, it would be both arbitrary and capricious to trust salmon conservation measures on PL land for the next 50 years to the yet-undetermined results of a yet-undeveloped modification of the Washington DNR process.

Hillslope Management

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The HCP establishes a process for approving logging on areas of "extreme," "very high" and "high" erosion hazard potential that is unlikely to avoid the adverse impacts of mass wasting events such as the debris torrent that buried Bear Creek. The process relies upon Timber Harvest Plans and CDF review of reports prepared by a Pacific Lumber geologist. Other agencies (including NMFS and the Environmental Protection Agency) will be notified of such THPs and allowed time to comment, but their objections are in no way binding upon CDF and are likely to have the same weight as comments from the general public (basically none).

This process was first tested in the Sulphur Creek area of the Mattole River basin during the summer of 1997, where federal agency objections to two THPs in the area were dismissed by CDF. The plans were approved despite a well-documented likelihood that they would trigger massive inputs of sediment to the already degraded Mattole system. Relying upon a geologist paid by Pacific Lumber and an industry-friendly agency like CDF will not avoid mass wasting impacts or result in proper hillslope management. Indeed, the process outlined under the HCP/SYP is remarkably similar to the status quo, under which logging-related landslides, flooding, and habitat degradation are all too common. Timber operations, including cable yarding, should not be allowed under any

circumstances where an "extreme," "very high" or "high" erosion hazard rating exists, or in inner gorge or headwall swale areas.

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Conclusion

Approval of the Pacific Lumber HCP/ SYP would legalize further degradation of the streams and rivers where coho salmon are struggling to survive. Approval would appreciably reduce the likelihood that coho will survive and recover in the wilds of the 330 square miles of rugged forestland proposed for coverage by the plan. The plan was developed in the absence of an overall recovery strategy for coho and other aquatic species, and fails to adequately consider the economic consequences of failure to recover a thriving regional salmon fishery. Finally, holding the Headwaters Forest acquisition hostage to approval of this HCP/ SYP is as indefensible as the HCP/SYP itself.

We urge the state and federal agencies reviewing this plan to deny the SYP and the application for incidental take permits, and take immediate action to protect California's public trust resources by designating final critical habitat, adopting a final harm regulation, enforcing the prohibition against take of coho, and beginning preparation of a recovery plan. Until these actions are taken, review and approval of any incidental take permit for northern California coho is premature. Thank you for your consideration of our views on this matter.

Sincerely,

Jud Ellinwood, Salmonid Restoration Federation
Zeke Grader, Pacific Coast Federation of Fishermen's Associations
Glen Spain, Institute for Fisheries Resources
Richard Gienger
Tom Weseloh, California Trout
Alan Levine, Coast Action Group
Larry Moss, Smith River Alliance
Tim McKay, Northcoast Environmental Center
Kathy Bailey, Sierra Club California
John Gaffin & Kevin Bundy, Environmental Protection Information Center
Craig Bell, Northern California Association of River Guides
Tara Mueller, Environmental Law Foundation
Dan Doble, Trout Unlimited of California

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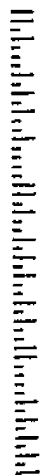
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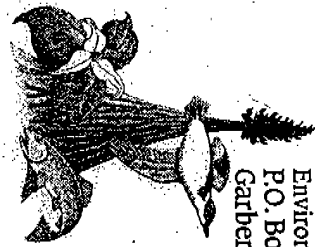


MR. JOHN MUNN
CALIFORNIA DEPARTMENT OF FORESTRY
1416 NINTH STREET
SACRAMENTO CA 95814



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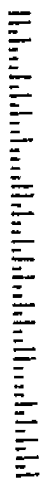


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CALIFORNIA DEPARTMENT OF FORESTRY
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